

DEPARTMENT OF STATE REVENUE

Revenue Ruling ST 98-09

July 24, 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales Taxability of Promotional Packages

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2

Taxpayer requests a ruling as to the taxability of promotional packages used by independent distributors.

STATEMENT OF FACTS

Taxpayer is a multilevel marketer of dietary supplements based in Coppell, TX. As a multilevel marketer, taxpayer's products are distributed through independent distributors. The distributors are not considered to be employees by taxpayer and are referred to as "Associates". Each Associate purchases a promotional pack from taxpayer as a selling aid. Each pack contains at least one of taxpayer's products that the distributors will be marketing as well as a brief description of each product. In addition product trays, binders, calendars, various marketing materials, and corporate literature is enclosed.

DISCUSSION

IC 6-2.5-2-1 provides that the sales tax is imposed on all retail transactions in Indiana. A retail transaction is defined at IC 6-2.5-4-1 as the acquisition of tangible personal property for the purpose of resale and the subsequent transfer of that property to another person for consideration.

If these items are not sold to distributors for resale, but are sold by the taxpayer to the Associates, the Associates are considered the ultimate consumer of these promotional materials for sales tax purposes. If the Associates purchased these items exempt, then

they are subject to Indiana use tax to the extent they are not used for an exempt purpose. Pursuant to IC 6-2.5-3-2, “an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.”

To the extent that promotional packages are purchased for an exempt purchase, such as a sale for resale, the Associate shall provide an exemption certificate. Pursuant to IC 6-2.5-3-7(a), a person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for use, storage, or consumption in Indiana, unless the person can produce evidence to rebut that presumption. Pursuant to IC 6-2.5-3-7(b), a retail merchant is not required to produce evidence of non-taxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form presented by the Department that the acquisition is exempt from use tax.

RULING

The Department rules that sales of promotional packages are subject to Indiana sales/use tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Department of State Revenue